

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AVENTIS PHARMA S.A., )  
Plaintiff, )  
counterdefendant, ) C.A. No. 06-636-GMS  
v. )  
BAXTER HEALTHCARE CORP., )  
Defendant, )  
counterclaimant. )

**SCHEDULING ORDER**

This \_\_\_\_\_ day of \_\_\_\_\_ 2007, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on June 27, 2007, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before July 5, 2007.

2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before September 14, 2007.

3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than February 1, 2008. If defendant elects to rely on advice of counsel as a defense to willful

infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than February 1, 2008.

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on May 13, 2008 at 9:30 a.m. The *Markman* hearing is scheduled for a total of 3.0 hours with each side having 1.5 hours. The parties shall exchange lists of claim terms to be construed, along with their proposed constructions, on or before February 18, 2008, and shall meet and confer regarding narrowing and reducing the number of claim construction issues on or before February 25, 2008. On or before March 10, 2008, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the court, a Joint Appendix of Intrinsic and Extrinsic Evidence (the "Joint Appendix") containing all intrinsic and extrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on March 21, 2008, and answering claim construction briefs on April 11, 2008.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before March 14, 2008. Opening expert reports from the party bearing the burden of proof on the issue shall be served on or before July 7, 2008. Rebuttal expert reports from the opposing party shall be served on or before July 28, 2008. Expert discovery in this case shall be initiated so that it will be completed on or before August 29, 2008.

(a) **Discovery and Scheduling Matters.** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours

prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issues in dispute. A sample letter can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file, within five (5) days from the date of service of the opening letter, an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers Filed under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this Order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

**If, after making a diligent effort, the parties are unable to agree on the contents of a joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).**

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to United States Magistrate Judge Mary Pat Thynge for the purpose of exploring the possibility of settlement. If the parties agree that the possibility of settlement may be enhanced by

such referral, the parties shall contact Magistrate Judge Thyng to schedule a settlement conference with counsel and the clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than August 6, 2008. Answering letter briefs shall be no longer than five (5) pages and filed with the Court no later than August 20, 2008. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before August 27, 2008. The Court shall hold a Status Conference to hear argument and to determine whether the filing of any motion for summary judgment will be permitted on September 3, 2008 at 9:30 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** All case dispositive motions and an opening brief and affidavits, if any, in support of the motion shall be served and filed on or before September 17, 2008, or two weeks from when the Court decides to permit such motions, whichever is later. Briefing will be presented pursuant to the court's Local Rules, unless the parties agree to an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver

copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing pursuant to Local Rule 7.1.4.

12. **Daubert Issues.** The Court will address Daubert issues at the Pretrial Conference.

13. **Pretrial Conference.** On November 20, 2008, beginning at 9:30 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov). On or before October 16, 2008, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. **Motions in limine:** No party shall file more than 5 motions *in limine*. Opening in limine briefs shall be filed on October 9, 2008; answering in limine briefs shall be filed on October 23, 2008; and reply in limine briefs shall be filed on October 30, 2008. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the Court the **joint** proposed final pretrial order with the information required by the form of Final Pretrial Order which can be located on this court's website at [www.ded.uscourts.gov](http://www.ded.uscourts.gov) on or before October 30, 2008.

14. **Trial.** This matter is scheduled for a seven-day trial beginning at 9:00 a.m. on December 8, 2008. At the June 27, 2007 scheduling conference, the Court indicated that it

would grant defendant's request to convert this case from a bench trial to a jury trial. Based on the representation of plaintiff's counsel that he needed to consult with his client before he could so stipulate, the parties have agreed to resolve this issue either by stipulated order in the event that they agree, or by motion in the event that they do not agree.

15. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel are on the line for purposes of selecting a new date.

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Chief Judge

181932.1

**ASHBY & GEDDES**

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July 6, 2007

The Honorable Gregory M. Sleet  
United States District Court  
844 King Street  
Wilmington, Delaware 19801

VIA ELECTRONIC FILING

Re: Aventis Pharma S.A. v. Baxter Healthcare Corp.,  
C.A. No. 06-636-GMS

Dear Chief Judge Sleet:

Attached hereto is the parties' jointly proposed form of scheduling order for the Court's consideration in the above action.

Respectfully,

/s/ *Steven J. Balick*

Steven J. Balick

SJB/rbg  
Attachment  
182092.1

cc: James B. Monroe, Esquire (via electronic mail; w/attachment)  
Philip A. Rovner, Esquire (via hand delivery and electronic mail; w/attachment)  
James G. Gilliland, Jr., Esquire (via electronic mail; w/attachment)